

August 11, 2005

Mr. Dave Catterson
Mr. Dave Williams
Association of Washington Cities
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Re: Department of Ecology's Draft NPDES Phase II Municipal Stormwater Permit

Dear Sirs,

Thank you for providing an opportunity to comment on the draft NPDES Phase II permit as a unified voice with the other affected jurisdictions, as detailed in your letter dated July 19. While we concur with many of the issues you mentioned, we would like to express the following points:

- Scope of Permit: The original version of the permit that came out of committee in 2003 was reasonable and workable, focusing on the six EPA minimum requirements "plus two." Ecology has apparently added program elements beyond those required by the federal Phase II rule (e.g. environmental monitoring). The scope of the permit may have become too broad - it should stick to EPA's requirements. Going beyond the minimum program components described in the federal rules may create new legal liabilities and detract from efforts applied toward primary water quality goals.
- Monitoring: Each permittee must develop a "comprehensive long-term water quality monitoring program" within four years from the effective date of the permit. The monitoring program is required to demonstrate that the permittee's Stormwater Management Program is preventing adverse impacts to water quality.

If implemented properly, a monitoring program could potentially provide very useful feedback on the effectiveness of stormwater management programs. However, with the myriad variables involved in stormwater runoff, the positive effects of stormwater management practices may not be discernable in the environment, or may require many years of data to become apparent. Associating water quality outcomes with specific program actions or a BMP will likely be expensive and time-consuming, and yet may yield misleading or inconclusive results. Any BMPs recommended in Ecology's manual are assumed to be effective – if they're not, they shouldn't be recommended.

The local jurisdictions could make observations and provide data, but we should not be held responsible to evaluate the effectiveness of BMPs, as required under the water quality monitoring program. That is primarily the responsibility of EPA and Ecology.

- Documentation: In addition to the application for the NPDES Phase II stormwater permit itself, permittees will also be required to prepare and submit a number of other related documents, including a TMDL Monitoring Quality Assurance Project Plan, a Water Quality Monitoring Program, and a Stormwater Management Program (SWMP) with various required components. Each permittee must submit an Annual Report including written documentation of all aspects of permit compliance activities. This required documentation and related activities represents a tremendous amount of time and expense for the affected municipalities, as well as a substantial staffing requirement for Ecology to review and track all of the documentation. We believe this could be scaled down to a more reasonable level.

- Flexibility: There is a wide range of stormwater management abilities and needs among the listed municipalities, but the permit requirements seem to allow very little flexibility. We can't "purify" the water at every outfall, so we need to be able to prioritize and focus on the worst first. Stormwater discharges are intermittent and highly variable in pollutant load and flow volume, so addressing stormwater issues requires some degree of flexibility. Yet the permit is not very flexible in terms of implementation requirements, and in fact some of those requirements may divert resources away from more vital water quality efforts.

- Implementation: It's a general permit with fairly stringent requirements, applied to a broad range of site conditions by jurisdictions with differing sets of priorities, resources and local water-related issues. The permit requirements will be challenging and costly to develop, implement and enforce. Most jurisdictions are already committed to protecting the waters of the state by reducing pollutants associated with stormwater runoff, but may differ significantly in their current approach. State-issued municipal stormwater permits will likely require most jurisdictions to substantially increase their efforts. For example, most Phase II municipalities probably do not currently monitor or maintain private infiltration facilities, but would now have to include them in the permitting and monitoring programs under the Phase II permit requirements.

- Compliance: It appears as though adherence to Ecology's *Stormwater Management Manual for Western Washington* will generally satisfy the requirements for permit compliance. However, the permit does not authorize violations of Washington State water quality standards. Since permittees cannot control all of the non-point sources tributary to stormwater end-of-pipe discharges, pollutant levels and flow-related variables should not be a factor in determining compliance with permit requirements.

- Funding: There could be a substantial level of expense for a questionable level of water quality improvement. Funding to meet permit requirements could become a big issue for most of the Phase II jurisdictions, particularly for those without a stormwater utility in place. Will the state provide funding to local governments to establish or maintain local programs to meet stormwater permit requirements?

Again, thank you for providing a unified forum for expressing comments on this significant issue. As stormwater issues become increasingly important, it's critical that jurisdictions in the Puget Sound basin have consistent, defensible stormwater programs and requirements. The Phase II permit must be appropriate and reasonable, to allow for effective but practical stormwater programs to foster full compliance and implementation. If the permit requirements are too broad or burdensome, the process may actually become less successful in achieving water quality goals. We would like to see a permit that provides solid legal coverage and guidance regarding stormwater responsibilities; is focused on achievable water quality goals; and is lean enough to be readily implemented.

Best Regards,

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cc: Greg Cuoio, City Manager